

E-Filing Policy Issue - # 11 (Official Document)

Issue: (State the issue and whether it is specific to a certain level of court or case type.)

- a. Since several copies of the same pleading may be housed or presented simultaneously in different locations within the AZTurboCourt system, which copy shall constitute the *official record*?
- b. Will pleadings scanned into a court's/clerk's EDMS prior to that court being granted authority by the supreme court to rely on electronic court records in lieu of paper records (i.e. *convenience* copies of paper pleadings) and up until the time E-filing is available for that court through AZTurboCourt, constitute the *official record*?
- c. Will pleadings/documents scanned by the filer and E-filed through AZTurboCourt and paper submissions scanned by a court into AZTurboCourt constitute the official record?

Discussion: (Provide the factual setting or context for the issue.)

Several copies of the same pleading may be housed or presented in different locations within the AZTurboCourt system, simultaneously. The pleading submitted by the filer will be housed in the clerk's EDMS. A file-stamped copy of this same pleading will be returned to the filer, through AZTurboCourt. AZTurboCourt will display the copy, but will not actually house/store a copy of the document, it will always retrieve it from another location. Another copy of this same pleading will be stored for viewing through a clerk's/court's document repository or the AOC central document repository. It is necessary to identify the copy/location that is to constitute the official record of the court.

- a. Additionally, standard court and legal profession business practices will soon be conducted through electronic documents instead of paper documents. In light of this trend, we must identify which documents housed in a clerk's/court's EDMS constitute the official record. Scenarios that must be considered include:
 - The filer e-files a pleading that only exists in electronic format
 - The filer scans a paper document into an electronic document and e-files this scanned image
 - The clerk/court scans a paper document once filed over the counter, into its EDMS

Additional related issues include:

- The clarity of the images

- The existence/extent of a quality assurance process to review scanned images
- Electronic images that pre-exist AZTurboCourt
- The court and its equipment from which the image is generated
- The filer and her equipment from which the image is generated

Currently, only one court that has been granted authority to convert (nearly all) paper pleadings filed in that court to electronic images and to designate the electronic version of the document as the official record – the Superior Court in Maricopa County. (See AO’s 2006-96 & 2007-77, attached.) This authority was granted to Maricopa County primarily because of their ability to meet specific standards for system backups, electronic records storage/archiving, and minimum standards set forth in ACJA §§ 1-504 and 1-506, including image quality and quality control procedures.

Most other general jurisdiction courts have also been scanning paper pleadings into their EDMS in recent years, however, the electronic version of these pleadings is for the convenience of the court, only. The paper version of these pleadings is still the official record. It is unclear whether the paper pleadings in these courts will remain the official record when the “unofficial” electronic version has been moved to the central document repository, whether scanned versions of old paper pleadings will become the “official record,” whether scanned images e-filed by parties constitute the official records, etc.

Authorities: (Provide references to specific statutes, rules, codes or administrative orders you believe are pertinent to the issue.)

Rules of the Supreme Court of Arizona

XII. Miscellaneous Provisions

Rule 124. Electronic Filing, Delivery and Service of Documents

(c) Date and Effect of Electronic Filing.

(2) An electronically filed document constitutes the filing of the original written and signed paper under the rules governing practice and procedure in the courts of this state. The court may require the party to produce the original of an exhibit that has been filed electronically. An electronically filed document as it resides on the court's computer shall be considered the original document satisfying the best evidence rule set forth in Rule 1002, Arizona Rules of Evidence.

The **draft** Administrative Order for Implementing AZTurboCourt in Maricopa County provides:

A. Official Record

- i. All documents accepted for filing through AZTurboCourt shall be considered the original written and signed document under the rules governing practice and

procedure in the courts.

- ii. Any such document printed or electronically transmitted from the clerk's EDMS shall be considered an official record and shall be considered the original document satisfying the best evidence rule set forth in Rule 1002, Arizona Rules of Evidence.
- iii. Any such document printed from the clerk's EDMS upon which the clerk has placed the clerk's seal attesting to the document's authenticity shall be considered a certified copy of the original.

A.R.S. § 12-283. Powers and duties

F. The clerk shall maintain and provide access to court records in accordance with applicable law or rule of court. The clerk shall keep a docket in the form and style as prescribed by the supreme court.

**ELECTRONIC CASE FILING ADMINISTRATIVE POLICIES AND PROCEDURES
MANUAL; IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA (12/1/09)**

When a document has been electronically filed, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. This includes information transmitted to the court in electronic format or converted by the court from paper submissions. (@ p. 2)

Note: See additional authority attached. (AO 2006-96, 2007-77, ACJA §§ 1-504 & 1-506)

Alternative Solutions: (List all identified alternative solutions for the issue.)

- Any one of the various copies/locations set forth in the first paragraph of the Discussion above could potentially constitute the *official record*, however only one must be identified as such.
- Designate the electronic or paper version of pleadings filed in general jurisdiction courts during various, identified points in time as the official record.

Position/Recommendation: (Does the AOC E-filing team have a recommendation on this issue?)

The AOC E-filing team recommends that the copy of the pleading housed in a court's/clerk's EDMS once AZTurboCourt has been implemented in that court should constitute the official record. This means that if a copy of the pleading is housed both on an AOC server and on the

local court's server, the official record is the copy at the local court. If a copy of the pleading is housed only on an AOC server, then the official record is at the AOC. This further means that the official record would reside on the server of any general jurisdiction court (even the rurals) but it would most often reside on an AOC server for the limited jurisdiction courts (with the exception of some who have their own EDMS such as Phoenix Muni, Tucson Muni, and Oro Valley).

The AOC E-filing team additionally recommends that the paper pleading filed in a general jurisdiction court that has not been granted authority by the supreme court to rely on electronic court records in lieu of paper records must constitute the official record (unless the individual court can establish that it met the standards established by the supreme court for relying on electronic records in lieu of paper records and the date when it met those standards). Once E-filing has been implemented in a court, the copy of the pleading filed subsequent to the initiation of e-filing, and housed in the court's/clerk's EDMS, should constitute the official record.

The AOC E-filing team further recommends that once E-filing has been implemented in a court, all documents e-filed in that court, whether in native electronic format or scanned into the system, should constitute the official record. This should include documents converted by the court from paper submissions.

Decision:

Within the context of the statewide e-filing system, the official copy is the record stored by the clerk's or court's EDMS, regardless of whether any corresponding paper exists, who holds the paper, or who originally scanned the document. A court desiring to scan paper and treat the images as the official record must have Supreme Court approval to do so. The concept of an official record is separate from the concept of proving a fact from a source document. Further work will be accomplished in developing administrative orders to define "original," "official," and other related terms